IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8953 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EAGLE CORPORATION PVT LTD - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR KH KAJI for Petitioner(s) : 1,MR MANISH K KAJI for Petitioner(s) : 1,
Mr. Kamal Trivedi, Advocate General with Ms. Sangita Vishen, AGP for Respondent(s) : 1 - 4.
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH
Date : 10/10/2006

C.A.V.

(Per : HONOURABLE MR.JUSTICE M.R. SHAH)

By this writ petition under Article 226 of the Constitution of India, petitioner seeks to challenge the provisions of Gujarat Tax on Entry of Specified Goods for the Local Areas Act, 2001 (Entry Tax Act) [hereinafter referred to as “the Act”] as ultra vires the Constitution of India being violative of Articles 301 and 304 of the Constitution of India. The petitioner also seeks to challenge the notices issued by the respondents No. 3 and 4 dated 24th March 2004, 1st April 2004 and 27th May 2004 at Annexure 'B' to the petition by which the petitioner is called upon to produce the certificate with regard to payment of entry tax.

2. The Statement and Objects of the Act, the Preamble, and the relevant provisions of the Act are as under;

Statement of Objects and Reasons (Bill No.36 of 2001):

This Bill seeks to introduce the entry tax on the specified goods with a view to giving effect to the proposal contained in the Budget Speech of the Finance Minister in the Legislative Assembly on the 26th July, 2001.

During the recent past, it has been observed that due to the difference in the rate of sales tax between the State of Gujarat and neighbouring States, diversion of trade has taken place and in some cases sales tax payments are avoided or evaded by various methods. This results in the loss of sales tax revenue legitimately due to the State of Gujarat. With a view to compensating such loss of sales tax revenue, it is considered necessary to levy a tax on entry of certain specified

goods purchased outside the State and brought into the local areas of the State of Gujarat for use, consumption or sale therein.

Preamble.__

AN ACT

(First published, after having received the assent of the Governor

in the "Gujarat Government Gazette" on 31st August 2001) to provide for levy of a tax in the State of Gujarat on the entry of certain goods into a local area of the State from any place outside the State, but not outside the territory of the Union of India for consumption, use or sale therein and for the matters connected therewith or incidental thereto.

*2. **Definitions**.*

(a) .....
(b) .....
(c) .....

*(d) **"entry of specified goods into a local area"** with all its grammatical variations and cognate expressions means entry of specified goods into a local area from any place outside the State but not being a place outside the territory of the Union of India, for consumption, use or sale therein;*

*(e) **"importer"** means a person who brings any of the specified goods into a local area from any place outside the State but not being a place outside the territory of the Union of India, for consumption, use or sale therein;*

*(f) **"local area"** means,_*

(i) a city within the meaning of the Bombay Provincial Municipal Corporations Act, 1949;

(ii) a municipal borough, transitional area, small urban area or a notified area within the meaning of the Gujarat Municipalities Act, 1963;

(iii) a village, within the meaning of the Gujarat Panchayats Act, 1993;

(iv) a cantonment within the meaning of the Cantonment Act, 1924;

(g)(h)(i) (j).....

*(k) **"specified goods"** means goods specified in column 2 of the Schedule;*

*(l)**"State"** means the State of Gujarat,*

*(m)**"tax"** means the tax payable under this Act,*

3. Incidence of tax.

*(1) Subject to the other provisions of this Act, on and from the 1st day of September, 2001, there shall be levied and collected on the entry of specified goods into a local area, a tax on the purchase of value thereof at such rates as may be fixed by the State Government by notification in the **Official Gazette,** but not exceeding the maximum rates specified in column 4 of the Schedule; and different rates may be fixed for different specified goods.*

(2) The tax shall be payable and paid by an importer in such

manner and within such time as may be ***prescribed****.*

(3) The tax shall be in addition to the tax levied and collected as octroi by a municipal corporation of a city constituted under the Bombay Provincial Municipal Corporations Act, 1949 or any other local authority, as the case may be, within its local area.

4. Reduction in tax liability.

(1) The amount of tax leviable under this Act shall, subject to such conditions as may be ***prescribed,*** *be reduced to the extent of the amount of tax paid, if any, under the law relating to Sales Tax as may be in force in any other state or Union Territory by an importer who had purchased the specified goods in that State.*

(2) The amount of tax leviable under this Act shall, subject to such conditions as may be ***prescribed*** *be reduced to the extent of the amount of tax paid, if any, under the Central Sales Tax, 1956 on the purchase of the specified goods in*

the course of inter-State trade or commerce.

(3) Where an importer of specified goods liable to pay tax under this Act, being a dealer in the specified goods, becomes liable to pay tax under the Gujarat Sales Tax Act,, 1996 or the Bombay Sales of Motor Spirit Taxation Act, 1958 by virtue of the sale of such specified goods, then his liability under the Gujarat Sales Tax Act, 1958 shall be reduced to the extent of tax paid under this Act.

Exemptions

12. (1) No tax shall be levied and collected in respect of motor vehicles mentioned at serial number 1 in the Schedule if such motor vehicles are registered in any other State or Union Territory of India under the Motor Vehicles Act, 1988 for a period exceeding

fifteen months before their entry into a local area of the State

(2) Subject to such conditions as it may impose, the State Government may, if it is necessary so to do in public interest, by notification in the Official Gazette, exempt any class of importers from payment of the whole or any part of the tax payable under this Act.

SCHEDULE

(See section 2(7c) and section 3(1)

PART I

Sr. No.	***Specified goods***	***Entry in Schedule II, Part A of G.S.T.Tct, 1969.***	***Maximum rate of tax.***
1	***2***	***3***	***4***
1.	*Motor Vehicles including Motor Cars, motor taxi-cabs, motoettes, motor omnibuses, motor vans, motor lorries.*	*128(1)*	*Twelve per cent.*
	Motor cycles, motor cycle combinations, Motor scooters, mopeds.	*128(2)*	*Twelve per cent.*
	Chassis of motor vehicles.	*128(4)*	*Twelve Per cent.*
	Body which is built on chassis of motor Vehicles.	*128(5)*	*Twelve per cent.*
2.	*.....*		
to.			
7.	*.....*		

Explanation – *For the purposes of this Schedule,-*

(1) Where sales of any of the specified goods at Sr. No. 1 to 6 of the Schedule is, by notification under sub-section (2) of section 49 of the Gujarat Sales Tax Act, 1969 exempt from whole or any part of the tax payable under that Act, the maximum rate of tax for such goods shall be reduced by such exemption.

(2) Where sales of the specified goods at Sr.No.7 of the Schedule is, by notification under section 35 of the Bombay Sales of Motor Spirit Taxation Act, 1995, exempt from whole or any part of the tax payable under that Act, the maximum rate of tax for such goods shall be reduced by such exemption."

The Gujarat Tax On Entry Of Specified Goods Into Local Areas Rules, 2001.

1 to 4.....

"5. Reduction in tax liability.__

The amount of tax shall be reduced under sub-sections (1) and (2) of section 4 of the Act, subject to the following conditions, namely:-

(i) The importer shall produce before the Assessing Authority,__

(a) the purchase invoice, along with a copy thereof, wherein the amount of tax payable, under the law relating to Sales Tax in the State or the Union Territory or as the case may be, the Central Sales Tax, was charged by the vendor who is a dealer registered under such law and who had sold the specified goods to the importer from that State or, as the case may be, the Union Territory, or

(b) a declaration, along with a copy thereof, from such vendor, declaring inter-alia that he had included the

amount of such tax in the price charged by him in the purchase invoice.

(ii)The importer shall furnish to the Assessing Authority the copy of the purchase invoice mentioned in clause (a) or as the case may be, the copy of the declaration mentioned in clause (b).”

3. Case on behalf of the Petitioner:

It is the case of the petitioner that the petitioner is engaged in the business of transportation and travel services to passengers in the State of Gujarat. The petitioner s registered under the Gujarat Sales Act as well as Central Sales-tax Act. The petitioner for the purposes of its travel and transportation business purchases Volvo luxury bus coaches from Bangalore and the same are brought into Gujarat for the purpose of its travel business. The petitioner purchased one Volvo luxury bus from one Jaico Automobile Engineering Co.Pvt.Ltd., and

the said bus coach was brought by road to Gujarat. The petitioner received a notice dated 24th March 2004 in Form No. 45 under Section 59 of the Gujarat Sales-tax Act to attend the office of respondent No.3 in regard to payment of entry tax and the said notice was followed by another notice dated 27.5.2004 calling upon the petitioner to pay the entry tax and produce evidence thereof failing which the registration under the Gujarat Act may be cancelled and he will be called upon to give security under the provisions of Section 30B of the Act. The petitioner also received notice dated 1.4.2004 from the R.T.O., Rajkot calling upon the petitioner to pay entry tax and produce the proof thereof. As according to the petitioner, the provisions of the Act are violative of Articles 301 and 304 of the Constitution, the petitioner has preferred the present Special Civil Application challenging the constitutional validity of the aforesaid provisions of the Act.

3.1. Shri K.H. Kazi, learned advocate appearing on behalf of the petitioner, has submitted that as the Objects and Reasons, the Act is enacted with a view to compensating the State for loss of salex tax revenue caused to the State owing to diversion of trade to neighbouring States where there is sales-tax at lower rate and therefore it is considered necessary to levy Entry Tax. It is submitted that the Entry Tax is violative of Article 301 of the Constitution because tax is imposed on importer of specified goods from other States into local area in the State of Gujarat which hampers free flow of trade from one State to another State. It is submitted that such a tax would clearly violate the mandate of Article 301 of the Constitution which states that trade, commerce throughout the territory of India shall be free. It is submitted that the only exception carved out by judicial interpretation is in respect of “Compensatory

Tax". It is submitted by Shri Kazi that such expression is now interpreted and defined by the Constitutional Bench of the Supreme Court in the recent case of **Jindal Stainless Ltd And Another Vs. State of Haryana and Others – [2006] 145 Sales Tax Cases Page 544**. It is submitted that as per the decision of the Hon'ble Supreme Court though the tax is a compensatory tax, there must be quantifiable and measurable benefits to the class of persons who are made liable to pay such a tax. It is submitted that the earlier view of some Benches of the Supreme Court, taking a liberal view of the expression "compensatory tax", is overruled. It is submitted that to compensate the loss of sales tax revenue to the State, an entry tax cannot be justified on the ground that it is compensatory tax. It is submitted by Shri Kazi that though the State in its first affidavit-in-reply tried to justify the levy on the ground that it is a compensatory tax, in view of the decision of the Hon'ble Supreme

Court in the case of *Jindal Stainless Ltd. And Another (supra)* but the State has given up the case of compensatory tax and have now sought to justify the same under Article 304 of the Constitution.

3.2. It is the contention on behalf of the petitioner that levy of entry tax which is only on importer of specified goods from other States into a local area in the State of Gujarat is discriminatory as there is no such tax on local dealers bringing specified goods from one local area to another local area in the State. It is submitted that as the discrimination is patent on the face of it, the levy violates Article 304(a) of the Constitution. It is submitted that Article 304(a) permits levy of any tax on goods imported from other States to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so

manufactured or produced. It is submitted that as the levy is only on imported goods and not on local goods entering into local area, the same is clear discrimination between importers and local dealers and therefore it is violative of Article 304(a) of the Constitution.

3.3. Meeting with the submission on behalf of the State that the local dealer pays sales tax at the same rate as the levy of tax leviable on importer and therefore there is no discrimination, it is submitted by Shri Kazi, learned advocate for the petitioner that the words “any tax” in Article 304(a) of the Constitution mean same tax which is levied on a importer and which is not levied on a local dealer. It is submitted that the discrimination should be considered qua the same tax and not with regard to different taxes. It is submitted that Entry Tax is a tax on entry and not on sale, while the sales-tax is a tax on sale. Two taxing events are totally different and operate at

different points of time and cannot be said to be pari materia so as to avoid the charge of discrimination. It is submitted that the importer may have bought the goods manufactured from another State who may not be liable to pay sales tax in that State because of incentive scheme but the importer has to pay entry tax as the provision in Section 4 of the Entry Tax Act providing for reduction or rebate in the Entry Tax for the sales-tax paid in the other State will not be available to him. It is submitted that similarly a manufacturer bringing the goods in the State of Gujarat will have to pay entry tax while a manufacturer in the State of Gujarat by entering in local area does not pay any entry tax nor sales-tax as there is no sale. It is submitted that levying entry tax on an importer whose seller in another State enjoys sales-tax exemption would amount to depriving the importer of that exemption as he would be liable to pay entry tax in Gujarat.

3.4. It is further submitted that violation of Article 304(a) of the Constitution cannot be justified on the ground that combined effect of two types of taxes imposed under different laws and having different taxing events ultimately imposing same amount of tax on both the importer and the local dealer. It is submitted that if discrimination is found in the entry tax itself it cannot be justified by submitting that other dealers are paying sales-tax under the sales-tax law or that when sales-tax is not payable by local dealers, entry tax also will not be payable.

3.5. It is further submitted that Article 304 of the Constitution overrides restrictions under Article 301 of the Constitution in respect of two types of legislations;

(i) imposing tax on imported goods to

which similar goods manufactured in the State are subject so as not to discriminate between goods so imported and so manufactured;

(ii) the State can impose reasonable restrictions on freedom of trade etc., in public interest provided bill is introduced in the Legislature with the previous sanction of the President.

3.6. It is further submitted that two clauses of Articles 304 of the Constitution are disjunctive and not in the alternative. Under Article 304(b) of the Constitution, restriction on the freedom of trade can only be justified provided following conditions are fulfilled;

(a) Restrictions are reasonable;

(b) Restrictions are in public interest;

(c) The Bill is moved with the previous sanction of the President.

It is therefore submitted that the State is not correct in contending that even if there is no discrimination violative of Article 304(a) of the Constitution, it need not comply with Article 304(b) of the Constitution. It is submitted that it is too late in the field to contend that tax is not a restriction on the free movement of goods. Relying upon paragraphs No. 43 and 45 of the Judgment of the Hon'ble Supreme Court in the case of *Jindal Stainless Ltd. And Another (supra),* it is submitted that the tax is a restriction on freedom of trade and therefore, of necessity, it has to comply with both Articles, i.e., Article 304(a) and 304(b) of the Constitution. It is submitted that it is not

sufficient to comply only Article 304(a) of the Constitution because every tax is held to be a restriction on the movement of goods.

3.7. As regards interpretation of Article 304 of the Constitution, the learned advocate appearing on behalf of the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of **Indian Cement Vs. State of Andhra Pradesh,** reported in **69 S.T.C. Page 305.** It is submitted that in the said decision, challenge was to the notification issued by the State Government providing lower rate of sales tax in respect of cement manufactured within the State as against cement manufactured from outside the State. It is submitted that dealing with interpretation of Article 304(a) of the Constitution, in the said Judgment, the Hon'ble Supreme Court has observed that reasonable restrictions may be imposed while the Legislature of the State in public interest – Article 304(b);

Non-discriminatory taxes may be imposed by the Legislature of the State on goods imported from another State, if similar taxes are imposed on goods manufactured in the State – Article 304(a). It is submitted that as observed by the Hon'ble Supreme Court in the said Judgment, when tax is levied interfering with freedom of trade, both conditions have to be satisfied. It is further submitted that it is also observed by the Hon'ble Supreme Court in the said decision that there cannot be any dispute that tax is a deterrent against free flow as a result of favourable or unfavourable treatment by way of taxation and the course of flow of trade gets regulated either adversely or favourably. It is therefore submitted that if the scheme which Part XIII guarantees has to be preserved in national interest, it is necessary that provisions in the Constitution must be strictly complied with. Relying upon the aforesaid decision, it is submitted that Article 304(b) of the Constitution

has also to be complied with by a tax legislation and the State must establish that restrictions are reasonable, the same are in the public interest and that previous sanction of the President was obtained. Shri Kazi, has also relied upon the following decisions of the Hon'ble Supreme Court;

(1) Weston Electronics vs. State of Gujarat,
70 STC Page 52.

(2) West Bengal Hosiery Association vs. State of Bihar, 71 STC 298.

(3) Andhra Steel Corporation vs. Commissioner of Commercial Taxes,
78 STC 243.

3.8. Shri Kazi has also relied upon a decision of the Allahabad High Court in the case of **Indian Oil Corporation Vs. State of Uttar Pradesh**, reported in **AIR 2004 All. 277**. It is submitted that the tax in issue in that Judgment was also

Entry Tax and the Allahabad High Court has dealt with the contention of sanction of the President under Article 304(b) of the Constitution, by observing that Entry Tax is a restriction which is not reasonable and not in public interest and no assent of the President was obtained, and therefore the Legislation was held to be violative of Article 304 of the Constitution. It is further submitted that it is also held by the Allahabad High Court that being not a compensatory tax, it was not saved by Article 301 of the Constitution. Relying upon the aforesaid decision, more particularly of the Allahabad High Court, it is submitted that even if the Entry Tax is not considered as discriminatory between importers and local dealers, still Entry Tax must comply with Article 304(b) of the Constitution. It is submitted that in the present case it is admitted that sanction of the President was not obtained before the Bill was moved in the State Legislature and further there is nothing to show

that the restrictions imposed are reasonable or in the public interest. It is further submitted that as the tax itself is a restriction and the same is imposed on the movement of goods from one State to another State, Article 304 of the Constitution has to be complied with.

3.9. Meeting with the decision of the Hon'ble Supreme Court in the case of Shanktikumar M. Sancheti vs. State of Maharashtra, (1995) 1 SCC 351, relied upon by the State, it is submitted by Shri Kazi on behalf of the petitioner that though the challenge was to the Entry Tax in the State of Maharashtra which tax was levied to compensate for the loss of sales-tax on account of business going to neighbouring States, and the Supreme Court upheld the levy, it is submitted that in the said case there was no challenge before the Court with regard to Article 304 of the Constitution nor with regard to the non-compensatory nature of the levy violating Article

301 of the Constitution and therefore it is submitted that the said Judgment has no application to the present as the ratio therein is entirely on different footing, challenging being that it transgressed the limits of Entry 52 of List II of VII Schedule. It is, therefore, requested to allow the present Special Civil Application and strike down the provisions of the Act by holding that the same are violative of Articles 301 and 304 of the Constitution.

4. Submission on behalf of the State.

Shri Kamal B. Trivedi, learned Advocate General, while opposing the present Special Civil Application, has submitted that imposition of Entry Tax is neither discriminatory as alleged nor is in violation of Article 301 and/or Article 304 of the Constitution. It is submitted that, Article 301 of the Constitution ensures freedom of trade and commerce throughout the country and

imposes a limitation upon the exercise of legislative power whether by the Union or by a State, and in view of this, any law which interferes with the freedom of trade, commerce, etc., as ensured under Article 301, will be attracted by the vice of unconstitutionality. However, there are three exceptions to the aforesaid proposition, i.e., regarding vice of unconstitutionality flowing from Article 301 viz.,

(i) A taxation legislation which otherwise interferes with the freedom of trade, commerce, etc., under Article 301 will be protected from the vice of unconstitutionality, if it is compensatory or regulatory in character as per its judicially evolved concept;

(ii) A taxation legislation, which seeks to levy tax of non-discriminatory nature in

the matter of its ultimate incidence and effect as between the goods imported from other States on one hand and the similar goods manufactured within the State, on the other, is protected from the vice of unconstitutionality.

(iii) A legislation, which seeks to recover tax of discriminatory character, will be immune from the vice of unconstitutionality if the following 3 conditions are satisfied;

(a) if should be in public interest;
(b) it should be reasonable; and
(c) it must have a prior sanction of the President.

In support of his above submission, Shri Trivedi has relied upon the Judgment of the Hon'ble Supreme Court in the case of **Automobile Transport**

(Rajasthan) Ltd. Vs. State of Rajasthan reported in **AIR 1962 S.C. Page 1406** [Paragraphs 17, 42 and 46].

4.1. Shri Trivedi has heavily relied upon the judgment of the Hon'ble Supreme Court in the case of **Shaktikumar M. Sancheti And Another Vs. State of Maharashtra And Others, (1995) 1 S.C.C. 351** and has submitted that a similar provision under Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987, was challenged before the Hon'ble Supreme Court and the constitutionality and validity of the similar type of legislation has been upheld by the Hon'ble Supreme Court. It is submitted that challenge to the aforesaid provision was on various grounds including the ground that it impeded freedom of the appellant under Article 301 of the Constitution and the same has been turned down by the Hon'ble Supreme Court. Referring to the Judgment of the Karnataka High Court in the case of **Syndicate**

Bank Vs. State of Karnataka and Others, 119 STC Page 155, more particularly the last para of the said decision, it is submitted that even while striking down a legislation of Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1979, it is also observed by the Karnataka High Court that there could be a provision by which no discrimination between imported goods and locally manufactured goods is made and the amount of entry tax is given adjustment in the total liability of sales tax for the amount of sales tax already paid could be given adjustment under the provisions of Entry Tax Act. It is submitted by Shri Trivedi that in the present Act, Section 4 provides for adjustment and therefore the provisions of the Act are saved under the provisions of Article 304 of the Constitution. It is submitted that Section 4(3) of the Gujarat Entry Tax read with Explanation 1 below Parts I and II of the Schedule to the Gujarat Entry Tax Act, 2001,

provides for adjustment as observed by the Karnataka High Court in the last para of the Judgment.

4.2. Meeting with the contention on behalf of the petitioner that the provisions of Entry Tax Act are discriminatory and discrimination is to be considered qua only one Act and that there is discrimination between the importers of the specified goods from other States into a local area into the State of Gujarat and the local dealers bringing specified goods from one local area to another local area in the State, it is submitted by Shri Trivedi, learned Advocate General that “discrimination” referred to in Article 304(a) of the Constitution is with reference to the goods imported from outside the State and similar goods manufactured within the State, which takes place because of imposition of “any tax”. It is submitted that in view of the above it cannot be legally contended that in the

present case discrimination has taken place because of imposition of “Entry Tax” since the “same tax” is not leviable in case of similar goods manufactured within the State. It is submitted that what is to be seen is the ultimate incidence of tax, that is resultant tax burden on both the types of goods, which, in the present case, shows that there is no discrimination. In support of his above submission, he has relied upon the decision of the Hon'ble Supreme Court in the case of **M/s. Video Electronics Pvt.Ltd. And another vs. State of Punjab and another, AIR 1990 S.C. 820**, [Paragraphs 3, 6, 22, 24, 25, 28 and 36], and another decision of the Hon'ble Supreme Court in the case of **M/s. Guruviah Naidu vs. State of Tamil Nadu, (1977) 1 SCC 234** [Paragraphs 2, 5, 9 and 11].

4.3. It is further submitted that while considering the provisions of Gujarat Entry Tax Act 2001, one cannot keep in mind “an entry tax”

in isolation inasmuch as by the very language of the said Act “Sales-Tax” is also brought in the picture, which may be considered to be an example of 'legislation by reference'. It is submitted that by virtue of sub-section (3) of Section 4, provisions of Gujarat Entry Tax Act, 2001 are to be considered conjointly with Gujarat Sales Tax Act, 1969, so as to work out ultimate burden of tax and consequent reduction in the liability of the sales tax. If the said provisions are read in juxtaposition of Explanation (1) below Parts I and II of the Schedule to the Gujarat Entry Tax Act, 2001, it would become abundantly clear that the said provisions are aimed at achieving level playing field so as to obviate any chance of discrimination. It is submitted that this is because of the fact that when there is a reduction in the effective rate of sales tax under the Gujarat Sales Tax, 1969, there will be automatic corresponding reduction in the maximum

rate of entry tax prescribed in the schedule, so that the goods brought from outside the State are not discriminated against the goods manufactured within the State, from the point of view of ultimate burden of tax. It is submitted that in the present case wherein the petitioner had paid 4% CST with reference to its motor vehicle outside the State of Gujarat and when the said vehicle was brought within the State, it was desired to pay entry tax at the reduced rate of 8% entry tax. It is submitted that, as against this, sales tax on such vehicle in Gujarat is 12%. Thus, resultantly, there arises no discrimination. Now, meeting with the example cited on behalf of the petitioner to the effect that there will be a discrimination when similar types of goods are exempted from the payment of sales tax at both the places, i.e., within the State as well as outside the State, and if such goods are brought from outside the State into the State of Gujarat, the same would be subjected to

'entry tax' it is submitted that the said example is fatally misconceived inasmuch as the Schedule to the Gujarat Entry Tax Act specifies only those goods which are otherwise taxable under the Sales Tax Act in the State. It is further submitted that only specified goods mentioned in Part I and Part II of the Schedule to the Act are subjected to entry tax [7 in number] and all those items which are subjected to entry tax are subjected to sales-tax and/or local taxes in the relevant State. While relying upon Explanation to the said Schedule, it is submitted that there is no discrimination at all and on the contrary it is to be at par with sales-tax. Shri Trivedi has relied upon the following decisions of the Hon'ble Supreme Court;

(1) Shaktikumar M. Sancheti And Another Vs. State of Maharashtra and Others, reported in (1995) (1) SCC Page 351;

(2) M/s. Bhagatram Rajeevkumar v. Commissioner of Sales Tax, M.P. And

Others.,(1995) Suppl. 1 SCC 673 Para 8;

(3) State of Bihar and Others vs. Bihar Chamber of Commerce and Others, (1996) 9 SCC 136, Paras 9,17,18 and 19;

(4) M/s. V. Guruviah Naidu And Sons and Others., Vs. State of Tamil Nadu and Others., (1977) 1 SCC Page 234, Para 9;

(5) Syndicate Bank vs. State of Karnataka and Others, 119 STC Page 155 (Last Para);

(6) M/s. Video Electronics Pvt.Ltd and another v. State of Punjab and another.,AIR 1990 S.C. 820, Paras 3, 6,22,24,25, 28, 29 and 36.

(7) G.K. Krishnan and Others vs. State of Tamil Nadu and Others, (1975) 1 SCC Page 375 [Paras 37, 38 & 39].

(8) State of Karnataka And Another vs. M/s. Hansa Corporation, 1980 (4) SCC Page 697 [Paras 15 and 16].

(9) Sushil Kumar Sharma Vs. Union of India and Others, 2005 (6) SCC 281 (Paras 12

to 15).

4.4. Relying upon the decisions of the Hon'ble Supreme Court in the case of G.K. Krishnan and Others vs. State of Tamil Nadu and Others, (supra), and in the case of *State of Karnataka and Another Vs. M/s. Hansa Corporation,* (supra), it is submitted by Shri Trivedi that there is always a presumption of constitutionality of a Statute and there has been a practice to show judicial deference to Legislature in instances of economic regulation. Relying upon the Judgment of the Hon'ble Supreme Court in the case of *Sushil Kumar Sharma Vs. Union of India And Others [supra],* it is submitted that mere possibility of abuse of provision of law does not per se invalidate a legislation. By making above submissions and relying upon above decisions and more particularly relying upon the decision of the

Hon'ble Supreme Court in the case of Shaktikumar *M. Sancheti And Another Vs. State of Maharashtra and Others, (supra),* wherein a similar provision of Maharashtra Entry Tax Act was challenged before the Hon'ble Supreme court, and Supreme Court has upheld the levy of entry tax, Shri Trivedi has requested to dismiss the present Special Civil Application by upholding the constitutional validity of the Entry Tax in question.

5. We have heard the learned advocates appearing on behalf of the respective parties at length. In the present petition, the petitioner has challenged the provisions of the Gujarat Tax on Entry of Specified Goods for the Local Areas Act, 2001 as ultra vires the Constitution of India as violative of Article 301 and 304 of the Constitution of India.

301. Freedom of trade,

commerce and intercourse.___ *Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.*

304. Restrictions on trade, commerce and intercourse among States.__

*Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law*__

(a) impose on goods imported from other States [or the Union territories] any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse

with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

6. It is the contention on behalf of the petitioner that provisions of the aforesaid Act and levy of entry tax are violative of Article 301 of the Constitution of India as tax is imposed on importer of specified goods from other States into local area in the State of Gujarat which hampers free flow of trade from one State to another State and therefore such a tax would clearly violate the mandate of Article 301 of the Constitution. It is the case on behalf of the petitioner that the only exception carved out by judicial interpretation is in respect of

“compensatory tax”. Relying upon the recent decision of the Hon'ble Supreme Court in the case of *Jindal Stainless* (supra), it is submitted that considering the aforesaid decision, the Entry Tax in question cannot be considered to be a 'compensatory tax'. The learned counsel appearing on behalf of the petitioner has heavily relied upon the decision of the Hon'ble Supreme Court in the case of *Jindal Stainless* (supra). It appears that, initially when the affidavit-in-reply was filed, the concept of compensatory tax, as per the law laid down by the Hon'ble Supreme Court at the relevant time, was some what different and the earlier decisions of the Hon'ble Supreme Court came to be considered by the Hon'ble Supreme Court in its recent decision in the case of *Jindal Stainless* (supra) which lays down that, the tax would be compensatory tax, if there are some quantifiable and measurable benefits to the class of persons who are made liable to pay such a tax and therefore

the State Government has by another affidavit-in-reply has clarified and has not contended that the Entry Tax in question is a 'compensatory tax'. However, it is the contention on behalf of the State Government that Article 304 is exception to Article 301 of the Constitution, and even if the tax is not held to be 'compensatory tax', in that case also a taxation legislation which seeks to levy tax of non-discriminatory in nature in the matter of its ultimate incidence and effect as between the goods imported from other States on one hand, and the similar goods manufactured within the State on the other hand, is protected from the vice of unconstitutionality. Thus, according to the State Government, a legislation, which seeks to recover tax of discriminatory character will be immune from the vice of unconstitutionality. Thus, what is required to be considered is whether, by the aforesaid provisions and the Entry Tax, there is any discriminatory treatment

and/or such levy is discriminatory or not.

7. It is the contention on behalf of the petitioner that the levy of Entry Tax is only on importer of specified goods from other States into a local area in the State of Gujarat and the same is discriminatory as there is no such tax on local dealers bringing specified goods from one local area to another local area in the State. It is further submitted that there is a clear discrimination between importers and local dealers and therefore it violates Article 304(a) of the Constitution. It is also the contention on behalf of the petitioner that it might be that as the entry tax is levied on an importer in Gujarat he is liable to pay the same, while the seller in another State enjoys sales-tax exemption which could deprive the importer of the exemption. It is his further contention that the discrimination is required to be considered qua each Act/tax differently and the payment of

sales-tax cannot be considered at par or equated with payment of Entry Tax. At this stage, the Statement and Objects of the Act and the Preamble thereon are required to be considered. It appears from the Statement of Objects that, due to the difference in the rate of sales-tax applicable to the State of Gujarat and the neighbouring States, diversion of trade has taken place and in some cases sales-tax payments are affected or evaded by various methods and the same results in the loss of revenue legitimately due to the State of Gujarat, and with a view to compensate such loss of sales-tax revenue, it is considered necessary to levy a tax on entry of certain ***specified goods*** produced/manufactured outside the State and brought into the local areas of the State of Gujarat. Section 4 provides for reduction of tax liability and the Entry Tax is reduced to the extent of the amount of tax paid, if any, under the law relating to sales-tax as may be in force in any other State

or Union Territory and/or by an importer who had purchased the specified goods in another State and/or reduced to the extent of amount of tax paid if any under the Central Sales Tax, 1956. Considering the Schedule appended thereto that the rate of Entry Tax provided for each specified goods is maximum upto 12%. Thus, considering the provisions of the Act, if the rate of sales-tax on specified goods in the State of Gujarat is 12 per cent and rate of sales-tax payable by the importer in a particular State is 4%, and if an importer in fact pays sales-tax and/or central sales-tax at the rate of 4%, then, in that case, while importing the specified goods into the State of Gujarat/local area, such an importer is required to pay the entry tax at the rate of 8%. It is required to be noted that, so far as the liability of sales-tax on local person is concerned, it is 12 per cent. Thus, when an importer who has paid 4% of sales-tax in a particular State while importing the goods in the

State of Gujarat is required to pay Entry Tax at 8 per cent which puts such importer at par with the local persons. Thus, when there is no discrimination at all in view of juxtapose effect of the two Acts, levy of entry-tax would be non-discriminatory. It is also required to be noted that, as per Section 12 of the Act, no tax shall be levied and/or collected in respect of the motor vehicles mentioned at Serial No.1 in the Schedule, if such motor vehicles are registered in any other State or Union Territory of India under the Motor Vehicles Act for a period exceeding 15 months before their entry into the local area of the State. It is, thus, evident from the above that, if a person has genuinely purchased a motor vehicle for use in another State and subsequently for some reason if he is required to bring the said motor vehicle into the State of Gujarat after 15 months, then such a person is not required to pay the entry tax. Thus, on a fair reading of the provisions of the

Act and the object of levy of Entry Tax, it cannot be said that such a levy is discriminatory between the importer of the specified goods from other States into a local area in the State of Gujarat, and the local dealers bringing specified goods from one local area into another local area in the State. The local dealers, bringing specified goods from one local area to another local area in the State, are, otherwise, paying the sales-tax at 12%. Thus, as stated hereinabove, on payment of Entry Tax by the importer, after deduction of sales-tax and/or C.S.T. already paid in another State, such an importer would be put at par with the local dealers. Thus, in sum and substance, the importers as well as the local dealers would be paying the tax at 12% in all. It can, therefore, be said that, on the contrary, the vice of discrimination would stand removed by payment of Entry Tax by an importer of specified goods. If the importer is not required to pay Tax on Entry

he would stand on better footing because on one side the local person would be required to pay 12% Sales Tax while the o,porter would be paying 4% tax in other State, which would be discriminatory qua the local person. Not only that, such low tax would persuade local people to import specified goods from another State which shall adversely affect the local production. It is at this point we must see that in the name of free flow of trade the local economy of a State can't be sacrificed. The contention, therefore, on behalf of the petitioner, that the discrimination is required to be considered qua each Act and the tax separately, has no substance at all. Considering the provisions of the Act and the objects for which the Act is enacted, one is required to see whether there is any discrimination qua goods imported and payment of sales-tax/tax thereon, and as stated hereinabove, on payment of Entry Tax fixed as aforesaid and considering the reduction as mentioned in Section

4 of the Act, an importer would be at par with a local dealer. In view of the clear position obtained in the case, the contention on behalf of the petitioner, that levy of entry tax is discriminatory, is required to be rejected. It is also to be noted at this stage that as per Section 304(a) discrimination is required to be considered between goods so imported and goods so manufactured or produced. It is undisputed that on payment of Entry Tax as a reduced liability does not put the importer at a position worse in comparison to local producer, dealer or manufacturer. If no Entry Tax is levied then the importer would steal a march over the local person and he would be in a dominating position to the extent of the Tax difference.

8. Now, on perusal of plethora of provisions of the Act, it is evident that they are aimed at achieving level-playing field so as to obviate any chance of discrimination. When

there is a reduction in the effective rate of sales-tax under the Gujarat Sales-Tax Act, automatically there will be corresponding reduction in the maximum rate of Entry Tax prescribed in the Schedule so that the goods brought from outside the State are not discriminated against the goods being manufactured within the State, from the point of view of ultimate burden of tax.

9. Coming to another contention raised on behalf of the petitioner that in a particular State there might be exemption from payment of sales-tax and now while bringing the specified goods into State of Gujarat an importer will be required to pay the Entry Tax and to that extent an importer would be at a disadvantageous position, it is required to be noted, first of all, that there is no such foundation and/or pleading in the petition. The validity of an Act is required to be considered on an appropriate

pleading and is not required to be considered on hypothesis.

10. So far as the next contention on behalf of the petitioner that two Clauses of Article 304 of the Constitution are conjunctive and not in the alternative and therefore even if the levy of tax is found to be non-discriminatory, in that case also the conditions imposed under Article 304(b) of the Constitution are also required to be complied with inasmuch as before levy of the said tax previous sanction of the President is required, is concerned, such a contention is required to be rejected outright. The provisions of Article 304(a) and 304(b) are to be construed and interpreted separately. If levy of a tax is found to be non-discriminatory between the goods so imported and the goods so manufactured or produced, in that case the conditions imposed under Article 304(b) of the Constitution are not

required to be complied with. If it is found that levy of tax is discriminatory between the goods so imported and the goods so manufactured or produced in a local area, then in such a case, on proof that imposition of such levy is in the public interest even if it is found to be 'discriminatory', the same will be valid if the same is imposed after obtaining previous sanction of the President. Thus, on fair reading of the provisions of Article 304(a) and 304(b), if the levy of tax is found to be non-discriminatory, in that case, previous sanction of the President is not required. If the contention on behalf of the petitioner is accepted, then there is no purpose in enacting Article 304(a) and 304(b) separately. If the argument is correct then what is mentioned in Article 304(b) could have been mentioned in Article 304(a) itself and both would not have been worded separately. Under the circumstances, the contention on behalf of the petitioner, that even if the levy of tax is found

to be non-discriminatory in that case too it is to be established that the same is in the public interest and that it requires previous sanction of the President, cannot be accepted.

11. As stated hereinabove, the learned counsel appearing on behalf of the petitioner has mainly relied upon the recent decision of the Hon'ble Supreme Court in the case of *Jindal Stainless (supra)*. However, it is required to be noted that the decision of the Hon'ble Supreme Court in the case of *Jindal Stainless (supra)* is with regard to tax being compensatory in nature dealing with Article 301 of the Constitution of India. As stated above, considering the recent decision, the State Government has given up their stand that levy of entry tax is compensatory in nature and is compensatory tax. Therefore, the decision relied upon by the learned counsel appearing on behalf of the petitioner would not be of any assistance to the petitioner. On the contrary, the constitutional validity of similar

provisions relating to levy of Entry Tax being Maharashtra Tax on Entry of Motor Vehicles Into Local Areas Act, 1987 with the same objects and reasons has been upheld by the Hon'ble Supreme Court in the case of *Shaktikumar M. Sancheti And Another Vs. State of Maharashtra And Others, [supra].* The learned counsel appearing on behalf of the petitioner has tried to submit that the constitutional validity of the said Act has been upheld on another ground. However, it is required to be noted that this Court is bound by the decision of the Hon'ble Supreme Court and it is not in dispute that similar provisions of the Act and the levy of Entry Tax have been upheld by the Hon'ble Supreme Court in the aforesaid Judgment. Under the circumstances, this Court cannot take a different view and is bound by the decision of the Hon'ble Supreme Court.

12. So far as the decision relied upon by the learned counsel appearing on behalf of the

petitioner in the case of *Indian Cement Vs. State of Andhra Pradesh [supra]* is concerned, in the said case the challenge was to the notification reducing rate of State sales-tax on cement sold to local manufacturers of cement products with a view to help the local cement industry and the Hon'ble Supreme Court after dealing with the rival contentions of the parties struck down the said notification by holding that the same is discriminatory and violative of Article 301 of the Constitution. Similarly, in the case of *Weston Electronics vs. State of Gujarat [supra], also* the challenge was against the notification reducing rate of tax on sale of goods manufactured within the State and the resultant effect of higher rate of Sales Tax on goods imported from outside the State. The Hon'ble Supreme Court, in view of the specifial facts of the case struck down the said Notification being violative of Article 301 of the Constitution. In the case of *West Bengal Hosiery Association vs. State of Bihar [supra], the*

challenge was qua notification exempting sales-tax on hosiery goods manufactured within the State and the resultant effect was that sale of hosiery goods manufactured outside the State were liable to sales-tax at 5% which was infringing the freedom of trade, commerce and intercourse. The Hon'ble Supreme Court had struck down the same being violative of Article 301 of the Constitution. In the case of *Andhra Steel Corporation vs. Commissioner of Commercial Taxes [supra],* the challenge was against exemption of goods manufactured out of locally purchased raw material while the goods manufactured out of imported raw material were not exempted, the same was found to be discriminatory and violative of Article 304(a) of the Constitution, it was struck down by the Hon'ble Supreme Court. Considering the facts of the present case and the provisions of the Act, as stated above, levy of Entry Tax is not discriminatory between goods so imported and goods so manufactured or produced, as on payment of Entry Tax as stated above the

importer would be at par with the local dealer.

13. So far as the decision of the Karnataka High Court in the case of *Syndicate Bank Vs. State of Karnataka and Others [supra],* upholding the challenge to the levy of tax on vehicles imported from outside the state alone while no tax was levied on vehicles manufactured in the State is concerned, it is required to be noted that in the said provisions there was no such provision like Section 4 of the Gujarat Act and therefore the Karnataka High Court held the said provision and levy was ultra vires the Article 301 and 304(a) of the Constitution. In fact, while declaring the aforesaid provision as ultra vires the Constitution, the Karnataka High Court has observed that there could be a provision by which no discrimination between imported goods and locally manufactured goods is committed and the amount of entry tax is given adjustment in the total liability of the sales-tax for the

amount of sales-tax already paid would be given adjustment under the provisions of the Entry Tax Act. It is undisputed that so far as the present Act is concerned, it provides for such a provision of adjustment, therefore, the judgment in the case of *Syndicate Bank Vs. State of Karnataka and Others [supra],* would not be of any assistance to the petitioner, rather the aforesaid observation will give a dent to the petitioner's case and would go in favour of the State of Gujarat.

14. In M/s. Video Electronics Pvt.Ltd. And another vs. State of Punjab and another, the Hon'ble Supreme Court has observed as under;

> *"It has to be examined whether difference in rates per se discriminates so as to come within Articles 301 and 304(a) of the Constitution. It is manifest that free flow of trade between two*

States does not necessarily and generally depend upon rate of tax alone. Many factors including the cost of goods play an important role in the movement of goods from one State to another. Hence the mere fact that there is a difference in the rate of tax on goods locally manufactured and those imported would not amount to hampering of trade between the two States within the meaning of Art. 301 of the Constitution. As is manifest, Art.304 is an exception to Art. 301 of the Constitution. The need of taking resort to exception will arise only if the tax impugned is hit by Arts. 301 and 303 of the Constitution".

15. In the case of *M/s. V. Guruviah Naidu*

and Sons and Others Vs. State of Tamil Nadu and Others [supra], the Hon'ble Supreme Court has observed as under;

> *"Article 304(a) does not prevent levy of tax on goods; what it prohibits is such levy of tax on goods as would result in discrimination between goods imported from other States and similar goods manufactured or produced within the State. The object is to prevent discrimination against imported goods by imposing tax on such goods at a rate higher than that borne by local goods since the difference between the two rates would constitute a tariff wall or fiscal barrier and thus impede the free flow of inter-State trade and commerce. The question*

as to when the levy of tax would constitute discrimination would depend upon a variety of factors including the rate of tax and the item of goods in respect of the sale of which it is levied."

16. So far as the powers of the Courts, while considering economic legislation, the Hon'ble Supreme Court, in the case of ***G.K. Krishnan and Others vs. State of Tamil Nadu and Others, reported in (1975) 1 S.C.C. 375,*** has observed in Paragraphs No. 37 and 38 as under;

37. In State of Gujarat v. Ambica Mills Ltd., this Court said : [SCC P.678 para 67, SCC (L&S) p. 403]

In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint, if not judicial deference to legislative judgment.

The Legislature, after all has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events ---- self-limitation can be seen to be the path of judicial wisdom and institutional prestige and stability (see Joseph Tussman and Jacobusten Brook, "The Equal Protection of the Law", 37 California Law Rev. 341).

38. This approach is consistent with the latest reported decision of the Supreme Court of the U.S.A. In San Antonio School District vs. Rodriguez whee the majority

speaking through Justice Stewart said:

Thus, we stand on familiar ground when we continue to

acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. Yet, we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favour of some other form of taxation. No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes

become subjects of criticism under the Equal Protection Clause."

17. In the case of ***State of Karnataka and***

Another Vs. M/s. Hansa Corporation, reported in ***(1980) 4 S.C.C. 697,*** the Hon'ble Supreme Court, while considering the constitutional validity of a Statute, has observed as under;

> ***15****. There is always a presumption of constitutionality of a statute. If the language is rather not clear and precise as it ought to be, attempt of the court is to ascertain the intention of the legislature and put that construction which would lean in favour of the constitutionality unless such construction is wholly untenable. However, where one has to look at a section not very well drafted but the object behind the legislation and the purpose of enacting the same is clearly discernible, the court cannot hold its hand and blame the draftsman and chart an easy course of striking down the statute. In such a situation the court should be guided by a creative approach to ascertain what was intended to be done by the legislature in*

enacting the legislation and so construe it as to give force and life to the intention of the legislature. This is not charting any hazardous course but is amply borne out by an observation worth reproducing in extenso in ***Seaford Court Estates Ltd. vs. Asher.*** *It reads as under:*

> *"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the*

language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. That was clearly laid down (3 Co Rep 7b) by the resolution of the

> *Judges (Sir Roger Manwood,C.B., and the other barons of the Exchequer) in **Heydon's** case and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden in his note (2 Plowd 465) to **Eyston vs. Studd**. Put into homely metaphor it is this: A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.*

*This view was reaffirmed in **Norman v. Norman**.*

> ***16**. Let it be remembered that the impugned measure is a taxing statute and in the matter if taxing statute the legislature*

enjoys a larger discretion in the matter of classification so long as it adheres to the fundamental principle underlying the doctrine of classification. The power of the legislature to classify is of wide range and flexibility so that it can adjust its taxation in all proper and reasonable ways. In Khyerbari Tea Co.Ltd. vs. State of Assam, this Court observed as under:

> *It is, of course, true that the validity of tax laws can be questioned in the light of the provisions of Articles 14, 19 and Article 301 if the said tax directly and immediately imposes a restriction on the freedom of trade; but the power conferred on this Court to strike down a taxing statute if it contravenes the provisions of Articles 14, 19 or 301 has to be exercised with circumspection, bearing*

in mind that the power of the State to levy taxes for the purpose of governance and for carrying out its welfare activities is a necessary attribute of sovereignty and in that sense it is a power of paramount character.

It was also observed that legislature which is competent to levy a tax must inevitably be given full freedom to determine which articles should be taxed, in what manner and at what rate. It would, therefore, be idle to contend that a State must tax everything in order to tax something. In tax matters, "the State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably" (see Willis on CONSTITUTIONAL LAW, p. 387). This statement of law has been approved by this Court in the case of East India Tobacco Co.v. State of A.P. The question, therefore, is, whether a tax of a certain kind

can be levied on entry of goods in certain local areas; the classification of local areas, if found to be reasonable, the levy of tax would not be invalid on the ground that choosing certain areas only excluding some others would violate Article 14. Whether in this case the classification is reasonable would be presently examined but the contention that if the State Government is granted a choice in the matter of selection of local area, ipso facto, the statute would be unconstitutional as being violative of Article 14, must be negatived."

18. Considering the various provisions of the Act, Statement of Objects, settled legal position and the facts stated hereinabove, it cannot be said that the provisions of the Act and the levy of the Entry Tax on the specified goods are violative of Article 304 of the Constitution of India. We hold that, levy of Entry Tax is

neither discriminatory between the goods so imported and goods so manufactured or produced in a local area, the challenge to the constitutional validity of the Gujarat Tax on Entry of Specified Goods for the Local Areas Act, 2001 (Entry Tax Act) and the levy of Entry Tax therefore fails. The petition deserves dismissal and it is accordingly dismissed. Rule

is discharged. However, there shall be no order as to costs.

[R.S. Garg, J.]

[M.R. Shah, J.]

RMR.